



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

MEMORANDUM

To: Attached Service List

From: Paul J. Hibbard, Chairman, Department of Public Utilities
Sharon E. Gillett, Commissioner, Department of Telecommunications
and Cable

Re: Memorandum of Agreement regarding jurisdiction over pole attachment and
double pole disputes

Date: July 18, 2008

On April 11, 2007, Chapter 19 of the Acts of 2007 ("Act") separated the functions of the Department of Telecommunications and Energy into two successor agencies: the Department of Public Utilities ("DPU") and the Department of Telecommunications and Cable ("DTC"). Individual agency jurisdiction regarding pole attachments and double poles was not addressed by the Act.

The DPU and the DTC are executing a Memorandum of Agreement ("MOA") which describes a process to share jurisdiction over issues related to pole attachments and double poles. The MOA has a two-year term, after which time the DPU and DTC intend to review its operation to determine what further changes, if any, are necessary. The MOA also contemplates that the DPU and DTC jointly will conduct a collaborative forum with interested stakeholders to address pole attachment and double poles issues.

The DPU and DTC invite interested stakeholders to provide comments on the MOA on or before **August 1, 2008**. Comments should be filed with both agencies as follows:

Mary L. Cottrell, Secretary
Department of Public Utilities
One South Station – 2nd Floor
Boston, Massachusetts 02110

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
Two South Station – 4th Floor
Boston, Massachusetts 02110

In addition, please submit electronic copies of comments to Laura.Olton@state.ma.us and to Geoffrey.G.Why@state.ma.us. Questions may be directed to Laura Olton, General Counsel, Department of Public Utilities at (617) 305-3519 or Geoffrey Why, General Counsel, Department of Telecommunications and Cable at (617) 368-1109.

MEMORANDUM OF AGREEMENT
between
Department of Public Utilities
and
Department of Telecommunications and Cable
regarding the regulation of attachments to utility poles, ducts, and conduits pursuant to
G.L. c. 166, § 25A and double poles pursuant to
G.L. c. 164, § 34B

This Memorandum of Agreement (“MOA”) is entered into this **X day of Month, 2008**, between Department of Public Utilities (“DPU”) and Department of Telecommunications and Cable (“DTC”).

WHEREAS, on April 11, 2007, pursuant to Article 87 of the Amendments to the Massachusetts Constitution, Chapter 19 of the Acts of 2007 (“Act”) reorganized the Governor’s cabinet and certain agencies of the Executive Department, separating the functions of Department of Telecommunications and Energy (“DTE”) into two successor agencies;

WHEREAS, the Act created DPU within the Executive Office of Energy and Environmental Affairs (“EOEEA”), as the successor to the DTE, for purposes of regulation of gas, water, and electric utilities, pipelines, and transportation industries;

WHEREAS, the Act created DTC within the Executive Office of Housing and Economic Development (“EOHED”) as the successor to the DTE, for purposes of regulation of the telecommunications and cable television industries;

WHEREAS, notwithstanding the above changes, jurisdiction over the regulation of attachments to utility poles, ducts, and conduits (“pole attachments”) pursuant to G.L. c. 166, § 25A and over double poles pursuant to G.L. c. 164, § 34B remains with DTE;

WHEREAS, DPU and DTC have agreed on a process to share jurisdiction over issues relative to pole attachments pursuant to G.L. c. 166, § 25A;

WHEREAS, DPU and DTC jointly agree to develop a process to share jurisdiction over issues relative to double poles;

NOW THEREFORE, the parties to this MOA, intending to be legally bound hereby, agree as follows:

1. When any entity files or otherwise raises a complaint with DPU relative to pole attachments or double poles, DPU will send a copy of such complaint or notice of proceeding to DTC within three business days at the following address:

Department of Telecommunications and Cable
Two South Station – 4th Floor
Boston, Massachusetts 02110

2. When any entity files or otherwise raises a complaint with DTC relative to pole attachments or double poles, DTC will send a copy of such complaint or notice of proceeding to DPU within three business days at the following address:

Department of Public Utilities
One South Station - 2nd Floor
Boston, Massachusetts 02110

3. As the utility poles, ducts, and conduits often are jointly owned by an electric distribution company and Verizon New England, Inc. and as the attachments at issue are used for various purposes, DTC and DPU will share jurisdiction over issues related to pole attachments pursuant to G.L. c. 166, § 25A and over double poles pursuant to G.L. c. 164, § 34B. As more fully described in paragraphs 4 and 5 below, the appropriate agency to adjudicate a pole attachment complaint will be determined by the primary purpose of the attachment at issue. As more fully discussed below in paragraph 11, DTC and DPU agree to establish a collaborative forum with interested stakeholders to identify and resolve issues related to pole attachments and double poles.
4. **DTC JURISDICTION OVER POLE ATTACHMENTS:** Except as provided below in paragraph 5, DTC shall be the appropriate agency to adjudicate a pole attachment complaint where the primary purpose of the attachment at issue is:
for the transmission of intelligence by
telegraph;
wireless communications;
telephone;
television, including cable television;
and any other communications service.
5. **DPU JURISDICTION OVER POLE ATTACHMENTS:** DPU shall be the appropriate agency to adjudicate a pole attachment complaint where the primary purpose of the attachment at issue is:

for the transmission of electricity for light, heat, or power;
for the measurement, reading, tracking, or recording of any customer's electric or natural gas usage, or electric or natural gas demand or consumption at any level of aggregation;

for remote reading of customer electric or natural gas meters, or the connection, disconnection, or alteration of electric or gas service to a customer or groups of customers;
for the remote alteration of the electric or gas consumption of any end-use consuming appliance or mechanism within an end-user's residence or place of business; or
for any application related to electric smart grid or advanced metering.

Notwithstanding an attachment's primary purpose, any attachment which involves or requires attaching to, using, or drawing from any wire or device that transmits electricity, including any attachment for the purpose of transmission of intelligence over electric power lines, or any attachment that affects or could affect the provision of electric smart grid or advanced metering, whether on poles, underground, at substations, or between the poles and the customer's electrical meter, shall be under the jurisdiction of DPU.

6. DPU and DTC agree that 220 C.M.R. § 45.00 et seq. are the applicable regulations with respect to pole attachments. In the event that either agency seeks changes to these regulations, or to other policies or procedures applicable to pole attachments, DPU and DTC agree to jointly develop and promulgate such regulations, policies or procedures consistent with G.L. c. 166, § 25A and consistent with any directives resulting from the collaborative forum, discussed in paragraph 11.
7. **CONSULTATION PLAN FOR POLE ATTACHMENT DISPUTES:** The agencies anticipate that, in most circumstances, the appropriate agency to adjudicate a pole attachment complaint will be resolved by paragraphs 4 and 5, above. However, exceptional cases may arise in which the appropriate agency to adjudicate a complaint is not clear. Therefore, the DTC and the DPU agree, through this MOA, to consult to reach agreement regarding the appropriate agency to adjudicate a pole attachment complaint ("Consultation Plan").
8. In order to enable the agency with jurisdiction to meet the 180 day deadline to issue a final order as required in 220 C.M.R. 45.08, DTC and the DPU agree that they shall endeavor to complete all tasks in the Consultation Plan within 30 calendar days of receipt of filing by both agencies (see paragraphs 1 and 2 above, and subparagraph a, below).
 - a. When a pole attachment complaint is filed at either agency, the agency receiving the complaint will follow the procedure set forth in paragraphs 1 and 2, above.

- b. Representatives from the DTC and the DPU will consult regarding the appropriate agency to adjudicate the pole attachment complaint within fifteen (15) business days of receipt of the filing by the other agency of the complaint (“15 Day Consultation Period”). The DTC and the DPU contemplate that, in most circumstances, this initial consultation will be sufficient to ensure that the complaint has been filed at the appropriate agency. In the event that either agency determines that it does not have sufficient information to determine the primary purpose of the attachment at issue as contemplated by paragraphs 4 and 5, above, it may request further information from the complainant and/or respondent. Either agency also may review the response to the complaint filed pursuant to 220 C.M.R. § 45.05. The 15 Day Consultation Period shall be suspended pending the receipt of such additional information or response to the complaint.
 - c. If the initial consultation results in agreement between DTC and DPU that the complaint is filed with the wrong agency, the agency that received the complaint shall dismiss that complaint, and the complaining party shall be directed to re-file the complaint with the appropriate agency.
 - d. If the initial consultation results in agreement by both DTC and DPU that neither agency has jurisdiction to resolve the complaint, then the agency that received the petition shall dismiss the petition on the basis of lack of jurisdiction.
 - e. If DTC and the DPU are unable to reach agreement regarding which agency is appropriate to adjudicate the complaint after the 15 Day Consultation Period, they shall submit the issue to the General Counsel of EOHED and the General Counsel of EOEEA for resolution.
- 9. The agency without jurisdiction shall have right of intervention in any proceeding conducted pursuant to paragraphs 4 and 5 above.
- 10. DPU and DTC agree to cooperate in the implementation of this MOA, including responding to requests for information and meetings, upon request by either party, to discuss information or issues related to the MOA.

11. DPU and DTC agree to institute a collaborative forum with interested stakeholders to address pole attachment and double poles issues. DPU and DTC agree to meet within two months of execution of this MOA to discuss the following items: (a) the scope of the collaborative forum, (b) selection of a facilitator and (c) a procedural schedule.
12. Absent any intervening and pertinent statutory amendments to G.L. c. 166, § 25A or G.L. c. 164, § 34B, this MOA shall expire two (2) years from the date of execution.
13. This MOA may be renewed or modified by written agreement of DPU and DTC.

IN WITNESS WHEREOF, DPU and DTC hereby execute this Memorandum of Agreement, in duplicate, on the **X day of Month, 2008**.

COMMONWEALTH OF MASSACHUSETTS

By and through:

DEPARTMENT OF PUBLIC UTILITIES

By: _____
Paul J. Hibbard, Chairman

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

By: _____
Sharon E. Gillett, Commissioner

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Department of Public Utilities
and
Department of Telecommunications and Cable
regarding the regulation of attachments to utility poles, ducts, and conduits pursuant to
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